IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

Crl.MC.No. 1220 of 2007()

CC.704/2004 of JUDL. MAGISTRATE OF FIRST CLASS-II(MOBILE), KOTTAYAM

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PETITIONER: 7TH ACCUSED

BINDHU PRASAD, C/O.PRASAD NAVEEN,
SUDARSAN, DIVISION NO.XL/4494,
SHENOY'S LANE, NEAR SUBASH AGENCY,
T.D.ROAD, ERNAKULAM.

BY ADV. SRI.C.ANILKUMAR (KALLESSERIL)

RESPONDENTS: COMPLAINANT A1 TO 6

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1. RAMLA K.M., MANAPPURATH HOUSE,
CHENGALAM SOUTH P.O., KOTTAYAM

2. MONARCH CONCEPTS AND MARKETING PVT.LTD.,
2ND FLOOR, KALOOR TOWERS, KALOOR, COCHIN-17,
REP. BY ITS DIRECTOR PRASAD NAVEEN, SUDARSAN,
DIVISION NO.XL/4494, SHENOY'S LANE, NEAR SUBASH
AGENCY, T.D.ROAD, ERNAKULAM.

3. PRASAD NAVEEN, SUDARSAN, DIVISION
NO.XL/4494, SHENOY'S LANE, NEAR SUBASH
AGENCY, T.D.ROAD, ERNAKULAM.

4. JOMY JOSEPH, FLAT NO.III-D,
PRESIDENCY COURT, CHAMMINY LANE,
KALOOR, ERNAKULAM.

5. EAPEN NINAN, CHAMIYODATHU HOUSE,
KALOOR, ERNAKULAM.

6. SILOO EAPEN, CHAMMIYODATHU HOUSE,
KALOOR, ERNAKULAM.

7. LEA JOSEPH, C/O.JOMY JOSEPH,
FLAT NO.III-D, PRESIDENCY COURT,
CHAMMINY LANE, KALOOR, ERNAKULAM.

8. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 31/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.1220 of 2007

Dated this the 31st day of May, 2007

ORDER

Petitioner is the 7th accused in a prosecution under Section 138 of the Negotiable Instruments Act. The proceedings have been initiated on the basis of a complaint filed by the 1st respondent herein. Accused No.1 is a Private Limited Company and the other accused are allegedly directors of the company. The petitioner has not admittedly signed the cheque. She is arrayed as an accused on the following short averments which appear in para.1 of the complaint.

> "The 1st accused is a company and the accused 2 to 7 are its Directors. The accused 2 to 7 are in charge and managing the affairs of the 1st accused company."

2. The learned counsel for the petitioner submits that the sweeping, vague and general averment made in para.1 of the complaint is too insufficient to justify initiation of criminal prosecution against the petitioner. He submits that the 7th petitioner, a woman, has nothing to do with the company, and the petitioner's connection with the 1st accused company is only that her husband happens to be the Managing Director of the company. Relevant documents have been produced. It is submitted that the learned Magistrate without insisting on any materials to establish any nexus between the

petitioner and the 1st accused company has chosen to issue process against the petitioner under Section 204 Cr.P.C and this results in needless vexation and harassment against the petitioner.

3. Notice was issued. Respondent/complainant has been served. The complainant has not chosen to appear before the Court. On an earlier occasion as per order dated 20.02.2007 in Crl.M.C.No.242 of 2007 in identical circumstances, the prosecution against the petitioner has been quashed by this Court.

4. In the total absence of a semblance of material to indicate or suggest that the petitioner is the Director of the company and in the light of the documents produced before this Court which remain uncontroverted, it can safely be concluded that the prosecution against the petitioner is not sustainable and the same deserves to be quashed.

4. In the result, this Crl.M.C is, allowed. The prosecution initiated against the petitioner pending before the Judicial Magistrate of the First Class-III, Kottayam as C.C.No.704 of 2004 under Section 138 of the N.I Act in so far as it relates to the petitioner is hereby quashed.

(R.BASANT, JUDGE)

rtr/-

R.BASANT, J

Crl.M.C.No.1220 of 2007

Dated this the 13th day of April, 2007

ORDER

Heard. Admitted. Issue notice to the 1st respondent/complainant. Notice need not be issued to respondents 2 to 7. Simultaneously give notice to the learned counsel for the 1st respondent, who is appearing before the court below and file a memo to that effect in 30 days.

2. Call on 28.05.2007.

Crl.M.Appl.No.1987 of 2007

There shall be an interim stay till 28.05.2007.

(R.BASANT, JUDGE)

rtr/-